

Sunday Alcohol Sales in Indiana: A History and Policy Proposal

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by

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Abstract

In Indiana, the debate over legalizing carryout Sunday alcohol sales has become an annual fight in the Indiana General Assembly each spring. Indiana's "Blue Laws" were once rooted in religious objections to drinking alcohol on the Lord's Day. However, now the issue is a fight between the package liquor store lobby and the grocery and convenience store lobby. The grocery and convenience stores argue that package liquor stores have an unfair advantage in the alcohol market. They claim that the issue of Sunday alcohol is a matter of convenience for Hoosier consumers. Package liquor store owners, however, fear that allowing Sunday alcohol sales would give grocery and convenience stores an unfair advantage and would force them out of business. This paper details the origins of Sunday closing laws, the history of alcohol regulation in Indiana, and the common arguments presented for and against the legalization of Sunday alcohol sales.

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Process Analysis Statement:

This thesis originated in a Public Policy course at Ball State University with Dr. Pamela Schaal. Part of the course was to analyze a public policy that affected the entire nation and create a policy proposal. I choose to study Sunday alcohol sales across the nation, with the intent of examining the relation of Sunday alcohol sales and alcohol-related car accidents. In the course of that research, I learned that alcohol regulation varies widely across the United States and I became interested in Indiana's alcohol regulation. This interest continued during the 2016 session of the Indiana General Assembly, as Sunday alcohol sales became a battle at the Statehouse yet again. As I followed the news regarding the newest Sunday alcohol sales bills, I began to realize just how complex the arguments on both sides of the issue truly were. After seeing Sunday alcohol sales bills fail yet again, I decided to research the arguments in more depth in an attempt to determine why the issue was such battle at the Statehouse.

To complete this project, I relied heavily on news sources from around the state of Indiana, particularly the *Indianapolis Star*. These articles not only presented the facts surrounding the issue, but they also helped to provide a public opinion gauge for the topic. I also examined the history of alcohol regulation in Indiana. This helped to present a more well rounded view of how Indiana arrived at the some-what inconsistent alcohol legislation in place today. This history also helped to provide context for much of the political climate in Indiana regarding alcohol regulation. After completing my research, I weighed both sides of the argument and came to my own predictions regarding the future of Sunday alcohol sales in Indiana.

Introduction

On an average Sunday afternoon, Hoosiers all across the state of Indiana can be found completing their weekly grocery shopping. Looking into these grocery carts, one can find everything from food for the upcoming week's meals to toiletries. One thing that won't be found in these carts is alcohol. Indiana is one of twelve states with bans on Sunday alcohol sales still on the books ("Sunday Alcohol Sales"). These prohibitions on alcohol sales, often referred to as Blue Laws, can be traced back to edicts in the Roman Empire and that have continued and morphed throughout history (Laband 3). Across the United States, these Sunday Alcohol Sales restrictions take various forms, including bans on different types of alcohol, bans on where alcohol can be purchased, and the hours in which alcohol can be purchased on Sunday. Currently in Indiana, Hoosiers are only permitted to purchase alcohol on Sunday at restaurants, sporting events, and a select handful of farm wineries, breweries, and artisan distillers. Recently, there has been a push for legislators to reform Sunday Alcohol Sales laws in Indiana. Those in favor of expanding Sunday alcohol sales argue that a full legalization of Sunday alcohol sales would be the next logical step in Indiana alcohol regulation. However those opposed to legalization of Sunday alcohol sales argue that this would strip away some of the last remaining competitive advantages that package liquor stores have in the alcohol market.

Origin of Blue Laws

"Blue laws" is a colloquial term referring to legislation that prohibits individuals from engaging in certain acts and imposes legal sanctions on violators (Laband 3). This term is said to have stemmed from the court of King Charles II where Puritans were described as being "true blue." Traditionally, these laws have been rooted in Christianity

and have covered everything from mandatory church attendance to prohibitions on hunting and alcohol consumption. During the early developmental stages, Sunday closing laws included influences from Mesopotamian, Hebrew, Roman, and Germanic cultures. Even before Christianity claimed Sunday as the Sabbath, Sunday was recognized as a day of rest (Carmin 191). In 321 AD, Roman Emperor Constantine declared that “all judges and all city people and all tradesmen” must “rest upon the venerable day of the sun” (Laband 9). It was not until 386 AD that Sunday edicts referenced the “Lord’s Day.” Joint Emperors Gratianus, Valentinianus, and Theodosius declared that the court system must cease work “on the day of the sun, properly called the Lord’s Day” (Laband 10).

Once Sunday edicts explicitly referenced the Lord’s Day, they became increasingly blatant in their religious motivation and began to include prohibitions on religious holidays in addition to the Sunday closing laws. These holidays included Christmas, the Epiphany, the days of Pentecost and Easter, and the baptism of Christ (Laband 10-12). By 1676, under the twenty-ninth Parliament of Charles II, fines were imposed on anyone over the age of fourteen found breaking Sunday legislation. The twenty-ninth Parliament of Charles II also required that “all and every person and person whatsoever shall upon every Lord’s day apply themselves to the observation of the same, by exercising themselves thereon in the duties of piety and true religion” (Laband 28). These laws from the twenty-ninth Parliament of Charles II served as the basis for law in the British colonies in North America (Laband 29).

In America, early colonial Sunday prohibitions, while based in British law, were far stricter than those in England (Carmin 193). In 1610, Virginia was the first North American colony to enact a Sunday closing law. This law required that all Virginians

attended church services on Sundays and spent the afternoon in individual prayer and observation of the Sabbath. First time violators of the law were fined a week's earnings. After the second violation, offenders were fined another week's earnings and were whipped in the town square. For any Virginian caught violating the law for a third time, the offense was punishable by death (Laband 30). While Virginia's punishment by death provision was an uncommon provision in Colonial America, many colonies did impose steep fines on anyone who violated their Sunday closing laws. In Massachusetts, violators were fined ten shillings. In Connecticut, violators were fined forty shillings. In Maryland, violators were fined one hundred pounds of tobacco (Laband 33).

After the Revolutionary war, the new states passed their own Sunday closing laws, removing many of the blatant religious. For instance, Virginia passed a new Sunday closing law in 1786 after the ratification of the United States Constitution. This version of the law no longer contained the mandatory church attendance policy or the provision including punishment by death. However, the new law did forbid all labor on Sunday and imposed a fine on those who violated the law. Much like Virginia, nearly every state in the Union passed Sunday closing laws after the American Revolution (Laband 30-33).

History of Alcohol Regulation in Indiana

In the late 1700s, as the United States began expanding its borders westward, the Northwest Territory was created. This territory was governed by the Ordinance of 1787, which contained a basic Sunday closing law prohibiting various activities and requiring businesses to close on Sundays. In addition to the Sunday closing law, the Northwest Territory also regulated the sale of alcohol, requiring all tavern owners to hold a license in order to sell liquor. Liquor qualities were tightly regulated and tavern owners risked

losing their license if they sold substandard alcohol. In 1800, the Indiana Territory was carved out of the Northwest Territory. A Sunday closing law was immediately passed in an effort to "prevent vice and immorality." Sixteen years later, this was seen yet again as Indiana obtained statehood. The First Indiana General Assembly immediately passed the state of Indiana's first Sunday closing law, prohibiting a variety of immoral activities on Sundays, including the prohibition of alcohol sales on Sunday. This Sunday closing law was amended several times and by 1905, the Indiana General Assembly passed a Sunday closing law that would remain relatively intact until 1977. This legislation not only prohibited the sale of alcohol on Sundays, but also prohibited the sale of alcohol on Christmas and Election Day (Carmin 192-196).

However, Indiana legislators were not content with merely banning the sale of alcohol one day a week and regulating the hours in which it could be sold throughout the rest of the week. In 1855, Indiana passed its first total alcohol prohibition. This law only lasted three years, but was reenacted in 1917. This second alcohol prohibition was followed by a national prohibition of alcohol in 1919. During this time, it became apparent that total prohibition efforts were a failure. Indiana again repealed its total alcohol prohibition, returning to alcohol licensing regulations and reinstating the Sunday Closing legislation. During the 1970s, the Indiana General Assembly revamped the Indiana Code regarding alcohol licensing (Carmin 192-196). In 1971, the Indiana General Assembly passed legislation allowing wineries to sell wine on premises for carryout on Sundays (Sikich, "Will Indiana..."). On February 13, 1973, Public Law 55 was enacted, creating Title 7.1 of the Indiana Code. This section of the code was intended to govern all alcohol licensing and sale regulations. On May 1, 1973, the Indiana General Assembly

amended the new title with Public Law 60, which permitted restaurants to sell alcoholic beverages on Sundays for consumption on the premises (Carmin 192-196). It was not until 2010 that the prohibition of carryout alcohol sales on Election Day was repealed. In that same year, the Indiana General Assembly passed a bill allowing Indiana microbreweries to sell their products for carryout on Sundays (Sikich, “Will Indiana...”). In 2015, Indiana Governor Mike Pence signed into law a bill repealing the prohibition of carryout alcohol sales on Christmas day. Under this law, Hoosiers were permitted to purchase alcohol for carryout provided that Christmas does not fall on a Sunday (Margason). During the 2016 Indiana General Assembly, legislators passed measures allowing farm wineries to refill growlers on Sundays and allowing artisan distillers to sell their products for carryout on Sunday (Haneline, “4 Big Changes...”).

Current Indiana Law Regarding Lawful Times of Alcohol Sales

Indiana’s laws regarding alcohol and tobacco can be found in Indiana Code Title 7.1. Ind. Code § 7.1-5-10-1 (a) declares that it is unlawful to sell alcohol in any manner not set forth by I.C. § 7.1-3-1-14. According to I. C. § 7.1-3-1-14 (a), alcohol sales are legal Monday through Saturday from 7am to 3am the following morning. At 3 am on Sunday morning, all alcohol sales are to cease completely and are not to resume until 7am on Monday morning.

However, that is not entirely true. Under I.C. § 7.1-3-1-14 (b), those holding a valid retailer’s permit for alcohol sales are permitted to sell alcohol for on-premise consumption on Sundays from 7am until 3am Monday morning. This provision includes restaurants, taverns, breweries, wineries, and artisan distilleries. Alcohol retailers are also permitted to sell alcoholic beverages for consumption on the premises of sporting events

on Sunday, provided that the city or county owns or leases the stadium, the facility is used in connection with the operation of a paved race track of at least two miles in length, or the premises are being used for a professional or amateur tournament (I.C. 7.1-3-1-14(c)).

For the most part, carryout alcohol sales are prohibited in Indiana. Package liquor stores, grocery stores, and most alcoholic beverage retailers are forbidden from selling alcohol for carryout on Sunday. However, there are exceptions to this rule. Under I.C. § 7.1-3-12-5 (10), those holding a farm winery permit are authorized to sell bottles of wine and growler refills on Sunday for carryout, provided that the product is manufactured on the premises. The farm winery permit allows these retailers to sell their products by the bottle or the glass for on-premise consumption on Sundays. I.C. § 7.1-3-2-7 (I) permits breweries holding a valid beer retailer's license, such as Sun King Brewing, to sell their beer for carryout on Sundays provided that it is sold in quantities not exceeding 576 ounces at a time. Indiana's last exception to the ban on carryout Sunday alcohol sales is found in I.C. § 7.1-3-27-8 (7). This provision of the Indiana Code allows artisan distilleries, like Hotel Tango, to sell liquor manufactured on the premises for carryout on Sundays. Sales under this provision cannot exceed 4.5 liters at a time.

An Introduction to Sunday Alcohol Sales Arguments in Indiana

The issue of Sunday alcohol sales has become an annual fight at the Indiana Capital building each spring. Each year, those on each side of the issue line the halls of the statehouse in attempt to sway legislators to vote in their favor. One would assume the fight would be between the ardent Christians—who are in favor of maintaining the Sabbath and who lobby legislators over countless issues at the statehouse each year—and

those in the business of selling alcohol—who want to expand their business and capitalize on the public's general support for alcohol sales. However, this is not the case.

The issue of Sunday alcohol sales has evolved from a religious argument into an economic argument. According to Christin Lazerus, a writer for the Chicago Tribune, "Indiana's alcohol laws are a tangled mess, which is less of a legacy of religion influenced "blue laws" and more of an example of competing business interests." The fight over Sunday alcohol sales now lies between the many grocery stores, convenience stores, and drug stores in favor of expanding alcohol sales and the many package liquor stores who are in favor of the status quo.

The Indiana Retailer's Association Political Action Committee and the Indiana Petroleum Marketers and Convenience Stores Political Action Committee stand firmly in favor of Sunday alcohol sales. These two groups, representing drug stores, grocery stores, and convenience stores, argue that Indiana laws regarding to alcohol regulations are antiquated and they claim Indiana consumers should be given the flexibility to purchase their alcohol any day of the week. However, package liquor stores argue that allowing Sunday alcohol sales would unfairly benefit grocery stores and convenience stores who have less restrictions on what they can legally sell and where they can be located. Package store owners fear that they will be forced out of business if they lose their last competitive advantages.

Argument in Favor of Sunday Alcohol Sales

For many, Sunday alcohol sales is a matter of convenience. According to Grant Monahan, the president of the Indiana Retail Council, "Sunday is the second busiest shopping day of the week. Hoosier families are very busy running around on the

weekends and this will help provide them with one stop shopping” (The Associated Press, “Poll Says...”). Indiana is the last state in the Union to still ban the carryout sale of alcohol on Sunday while allowing the sale of alcohol in restaurants (“‘No Major Action’...”). Those like Monahan and the Indiana Retail Council argue this indicates that Indiana’s laws are outdated and inconvenient for the twenty-first century consumer. Furthermore, polls indicate that Hoosiers favor the idea of Sunday alcohol sales by a narrow margin. According to the Evansville Courier & Press, the Indianapolis Star polled 600 likely voters in 2008 about their positions on Sunday alcohol sales. Forty six percent of Hoosier respondents supported expanding alcohol sales in Indiana, while forty five percent of Hoosier respondents were in favor of keeping the status quo. Nine percent of Hoosier respondents were undecided on the issue (The Associated Press, “Poll Says...”). A poll conducted in 2015 by Public Opinion Strategies indicated that fifty eight percent of Hoosiers were in favor of legalizing Sunday alcohol sales (Gamache). The Indiana Retail Council and those in favor of expanding permissible times for alcohol sales in Indiana argue that the increase in public support for this issue supports their claim that the issue is a matter of convenience for Hoosier consumers.

Furthermore, those in favor of Sunday alcohol sales argue that Indiana loses roughly nine million dollars in tax revenue as a result of Hoosier consumers traveling to bordering states to purchase alcohol for carryout on Sundays (Sikich, “Sunday Booze...”). According to the Distilled Spirits Council of the United States, each of Indiana’s neighboring states offers some form of carryout alcohol sales on Sundays (“Sunday Alcohol Sales”). Monahan estimates that Indiana businesses lose almost one hundred and twenty nine million dollars in sales to bordering states annually as a result of

Indiana's strict prohibition on Sunday carryout sales (Sikich, "Sunday Booze..."). Many groups in favor of Sunday alcohol sales offer the potential for increases in tax revenue as an opportunity to offer more alcohol awareness programs across the state (The Associated Press, "Hoosiers for Beverage...").

Those campaigning for Sunday alcohol sales also argue that current legislation encourages drinking and driving. John Elliot, spokesman for Kroger and a representative of Hoosiers for Sunday Sales, argues that most of the available options for alcohol consumption on Sunday require consuming the beverage on the premises. Elliot argues that this practice encourages drinking and driving. He claims that Hoosiers would be safer if they were given more options for purchasing alcohol for carryout on Sundays (Gamache). This is a position that many across the state of Indiana agree with. The Batesville Herald Tribune published an editorial on January 21, 2016, as the Sunday Sales issue was heating up once again at the statehouse. The editorial board argued that Indiana alcohol laws send the message "that it's ok to drink in a bar or a restaurant on a Sunday. You just can't buy a six-pack to take home." They question the logic in this message, asking if Indiana truly wants to send a message that it is "ok to drink and drive home, but it's not ok to drive home and drink" (Staff Writer).

Argument Against Sunday Alcohol Sales

While those in favor of Sunday alcohol sales paint the as a mere convenience for Hoosier consumers, the package liquor store coalition views the issue much differently. They claim "the big-box stores have been trying to put package stores out of business for decades and have used their marketing and buying power to unfairly compete against small Hoosier-owned businesses" (Corliss). This issue is often described as a "David vs.

Goliath” fight, where small, locally owned package stores are on the right side of the issue and the large grocery store and drug store chains are in the wrong. However, package store owners are not entirely unjustified for painting the issue in this light. Under Indiana law, package liquor store owners are under considerable regulations detailing where they can locate their business, what they are legally allowed to sell, who they can employ, and who can even enter their store. Indiana law has essentially dictated their business model to package store owners. Changing Indiana alcohol regulations would require these businesses to completely change their business model, which explains the fervency in which package store owners oppose attempts to legalize carryout alcohol sales on Sundays. To them, whether or not they win this fight determines whether or not their business survives (Sikich, “Will Indiana...”).

The package store lobby has been incredibly successful at demonstrating that they are already at a disadvantage under Indiana law. According to Patrick Tamm, the CEO of the Indiana Association of Beverage Retailers, “you have to be twenty one and an Indiana resident to be an owner [of package stores]. Who we are, what we can sell has all been dictated to us.” Tamm further stated that all employees of package stores must be licensed. Grocery stores and big-box stores are not required to follow these regulations. To Tamm and many other package store owners, this puts the often locally owned stores at a serious disadvantage (Gamache).

On top of the regulations dictating what package liquor stores can sell, Indiana even regulates where package store owners can locate their business. Under I.C. § 7.1-3-10-5 (a), the state of Indiana will only issue one package liquor store license per every 8,000 residents of city or town. Furthermore, package liquor stores are not permitted to

locate their business within two hundred feet of a church or a school (I.C. § 7.1-3-21-11 (b)). However, neither of these regulations applies to grocery stores, drug stores, or convenience stores (I.C. § 7.1-3-21-11 (c)).

Because grocery stores and convenience stores have fewer regulations than package liquor stores, legalizing Sunday alcohol sales would place package liquor stores at an even bigger disadvantage. Michael J. Hicks and Nalitra Thaisprasert completed a study in 2010 for the Ball State Center for Business and Economic Research on the effect that legalizing Sunday alcohol sales would have on package liquor stores. In their research, they examined state liquor laws and the number of package liquor stores before and after Sunday alcohol sales were legalized. They found that the legalization of Sunday carryout alcohol sales reduced the number of package stores by eight to nine percent. This would be forty eight to fifty five stores going out of business in the average state. However, in states that allowed Sunday carryout alcohol sales and allowed grocery stores to sell alcohol saw a reduction of package liquors stores by more than twenty five percent. According to Hicks and Thaisprasert, this means that the average state would see one hundred and fifty three package liquor stores go out of business. John Livengood, the president of the Indiana Association of Beverage Retailers, claims that if Sunday alcohol sales were legalized in Indiana two hundred and fifty package liquor stores would go out to business and almost one thousand jobs would be lost (Sikich, "Sunday Booze..."). Many argue that this phenomenon is the result of the additional overhead costs package liquor stores would incur when opening their doors an extra day and the lack of a reciprocal increase in total revenues. Hicks and Thaisprasert say Sunday alcohol sales do

not increase the total amount of alcohol sold. Rather, legalizing Sunday alcohol sales would shift commerce away from package liquor stores to grocery stores.

Aside from the economic arguments against Sunday alcohol sales, many package liquor store owners argue that the current system is designed to better regulate alcohol sales and who can purchase alcohol. According to Tamm, the purpose of package liquor stores is to sell alcohol exclusively and Indiana law has created regulations to ensure that clerks at package liquor stores are licensed and trained to stop underage individuals from purchasing alcohol (Gamache). However, the Indiana State Excise Police conducted a two-year study that found that package liquor stores are more likely to sell alcohol to minors than any other alcohol retailer ("Alcohol Fight Likely to Continue"). This does not diminish other valid concerns about alcohol regulation and Sunday alcohol sales though. Many package store owners argue that alcohol is a commodity unlike many other commodities. To them, alcohol is a product that can easily be abused, causing detriment to both the individual and society as a whole ("No Major Action'...").

The Future of Sunday Alcohol Sales in Indiana

Given the intense debate regarding Sunday alcohol sales in Indiana, change is not likely to occur in the near future. State legislators are fearful of offending the large package store lobby and as a result are reluctant to pass legislation that may harm package store owners ("No Major Action'..."). Legislators are more likely to favor the locally owned establishments over the interests of large out-of-state corporations like Kroger or Wal-Mart. While many Republican legislators are typically in favor of more free markets, on this issue, they often opt to control how the alcohol market operates. According to these legislators, current Indiana law regarding alcohol sales is a mild

inconvenience to consumers, but no one is hurt by the law. However, if Indiana were to legalize Sunday alcohol sales, there is a high likelihood that the package liquor store would be substantially hurt. Unless legislators can propose legislation that even the regulatory playing field without overly burdening grocery stores and convenience stores, it is unlikely that issue will be resolved.

Many of the most recent proposed bills regarding Sunday alcohol sales have attempted to strike a compromise between the package liquor store lobby and the grocery and convenience store lobby by attempting to balance the regulations placed on the various alcohol retailers. In 2015, State Representative Tom Dermody authored a bill that would legalize Sunday alcohol sales. This bill would require grocery stores to partition off their alcoholic products from other products, particularly toys. Grocery stores would only be allowed to have one isle with alcoholic products, unless they placed them all in a separate room. The bill also prohibited alcohol retailers from utilizing self-checkout machines for the sale of alcohol and required that any clerk ringing out alcohol at a drug store or grocery store hold an employee alcohol permit and complete alcohol server training. The House Public Policy Committee amended the bill, stating that all clerks checking out alcohol must be twenty-one and required liquor to be sold from behind the counter ("House Bill 1624"). Grocery stores and convenience stores opposed the bill, stating that these restrictions only favored package liquor stores. The grocery store lobby viewed the attempt at a compromise between the competing interests as an anti-consumer measure. They claimed that it would cost stores one million dollars in store renovations in order to comply with these new restrictions. The bill was defeated in the house on February 19, 2015 in a forty seven to forty five vote ("House Bill 1624").

In 2016, Representative Dermody introduced his bill again. This time, the bill did not contain the provision requiring that liquor be sold from behind the counter. Instead, the bill required stores allowing consumers to access to alcohol without assistance to use surveillance video to monitor customers. The 2016 version of the bill still contained the provisions requiring store clerks to be twenty-one to ring out alcohol and also contained the provision requiring alcohol displays to be separate from other products ("House Bill 1399"). Grocery stores were much more receptive to the 2016 bill than the 2015 bill. However, the bill did not contain enough restrictions for grocery stores to satisfy the package store lobby (Haneline, "Another Year..."). The bill did not survive the vote of the Public Policy Committee ("House Bill 1399").

Proposed Policy

In light of the strong public support for Sunday alcohol sales in Indiana, it only makes sense to legalize Sunday sales. However, the study conducted by Michael Hicks regarding Sunday alcohol sales affect on package stores shows that simply legalizing Sunday sales would result in harming hundreds of Indiana businesses. To fairly legalize Sunday alcohol sales, legislators must level the regulatory field. In order to do this, the Indiana General Assembly should require clerks checking out alcohol to be at least twenty-one years of age and require alcohol server training. Furthermore, grocery stores and convenience stores should be required to keep hard alcohol in a separate location than the rest of their products. This section should be staffed by someone who is at least twenty-one years old and no person under the age of twenty-one should be permitted to enter the area. These regulations would help to ensure that alcohol is being sold responsibly and that the package liquor store industry would not be dealt a fatal blow.

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